IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

WP(C).No. 30765 of 2007(K)

PETITIONER:

MUTHOOT HOTELLS AND TOURISM VENTURE
(P) LTD., PUNNEN ROAD, THIRUVANANTHAPURAM,
REPRESENTED BY ITS DIRECTOR THOMAS GEORGE MUTHOOT.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.ANIL D. NAIR

RESPONDENTS:

1. ASSISTANT COMMISSIONER,
SPECIAL CIRCLE, COMMERCIAL TAX,
THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED
BY ITS SECRETARY (TAXES), SECRETARIAT,
THIRUVANANTHAPURAM.

BY G.P. SHRI.A.J.VARGHESE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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W.P.(C).No.30765 of 2007

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Dated this the 1st day of November, 2007

J U D G M E N T

The petitioner is a company incorporated under the Companies Act running a hospitality business. It owns a star hotel at Thiruvananthapuram and also runs a restaurant at Airport, Thiruvananthapuram. The airport restaurant is stated to be 7 kilometers away from the star hotel. The restaurant at the airport is being run after paying licence fee under Section 5B of the KGST Act. In respect of the airport restaurant, the petitioner was permitted to compound the tax liability under the Kerala Value Added Tax Act, 2003 for the years 2005-06 and 2006-07. The petitioner applied for compounding for the year 2007-08 also. The petitioner contends that the assessing officer, without giving notice to the petitioner as required under the rules, rejected the application for compounding on the premise that the airport restaurant is a star and bar attached hotel and therefore, the petitioner is not entitled to the benefit of compounding under Section 8(c)(i) of the KVAT Act, 2003. The petitioner, therefore, seeks the followings reliefs:

"a) call for the records leading to Ext.P2 order of the 1st respondent and quash the same by the issuance of a writ of certiorari or such other writ order or direction.

b) To issue a writ of mandamus or such other writ, order or direction directing the 1st Respondent to permit the petitioner to make payment under Section 8(c)(i) of the KVAT Act 2003 pending disposal of this writ petition.

c) To grant a stay of operation of Exts.P2 order."

2. Learned Government Pleader, on instructions, submits that the petitioner is not entitled to the benefit of compounding. However, it is not disputed that no notice has been issued to the petitioner before rejecting his application for compounding. It is also not disputed before me that Rules prescribe that notice should be issued to the petitioner, if the assessing officer intends to reject the application. I view of the same, I quash Ext.P2 order and direct the 1st respondent to consider the matter afresh after issuing notice to the petitioner as required under the rules and affording an opportunity of being heard to the petitioner.

The writ petition is disposed of as above.

sdk+ S.SIRI JAGAN, JUDGE